



FOR CLERK USE ONLY

City Council

Item No.

CITY COUNCIL AGENDA FACT SHEET

POLICE

Department

October 27, 2009

Requested Date

1. Request:

Council Approval ☒Other (specify) ☐Information Only/
Presentation ☐Hearing ☐

2. Requested Action:

Hold Public Hearing. Approve resolution and authorize Police Chief to advertise a Request for Proposals for City Towing Services.

3. Fiscal Impact:

Revenue:

Increase ☒Decrease ☐Source: Amount: \$

Cost:

Increase ☐Decrease ☐Source: Amount: \$ Does Not Apply ☐

4. Reviewed By:

Finance Dept. on By: Comments: City Attorney on By: Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE: Action ☐Consent ☐Hearing ☐Filing ☐Presentation ☐Other(specify) Reviewed by: City Clerk Date City Manager Date

CITY COUNCIL AGENDA REPORT

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO AMENDING THE MASTER FEE SCHEDULE AND SETTING FRANCHISE FEES, IMPOUND CHARGES, AND MAXIMUM TOW RATES REGARDING GRANTING FRANCHISE AGREEMENTS FOR TOWING SERVICES WITHIN THE CITY OF CALEXICO

AGENDA DATE: September 22, 2009

PREPARED BY: Jim Neujahr, Police Chief
Jennifer M. Lyon, City Attorney

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: Approve resolution and authorize Police Chief to advertise a Request for Proposals for City Towing Services.

FISCAL IMPACT: Current costs to City associated with vehicle tows, impounds, etc., will be substantially offset by cost recovery provisions in this resolution.

BACKGROUND INFORMATION: At the September 1, 2009 Council meeting, the Council approved an ordinance which adopted a towing franchise system for the City. The ordinance will take effect on October 1, 2009 and the City can then begin to implement the franchise system for towing services initiated by the City. Prior to implementation of the program, it is necessary for the Council to set the rates listed in the attached draft resolution so that an RFP can be finalized and advertised. Once the proposals have been submitted and reviewed, they will be submitted to Council for approval and to allow the City to set up its list for rotational tows. Prior to this new system being implemented, the Police Department will continue to use its current rotational towing list.

CURRENT DISCUSSION: The draft resolution proposes an annual franchise fee to be paid to the City, pursuant to California Vehicle Code section 12110(b), by the tow provider in the amount of \$2,500.00 based on a per vehicle tow charge. This amount is based upon the City of Calexico Users Fee study. This amount has been calculated to meet actual costs to administer the tow franchise program.

This resolution further approves a vehicle impound cost recovery charge pursuant to California Vehicle Code section 22850.5 of \$290.00 to be paid to the City by the registered owner of the vehicle, in order to offset the administrative costs to City related to tow, impound, etc., of vehicles during the normal course of duty. This amount is based upon the City of Calexico Users Fee Study completed in 2009. This charge is also calculated to meet the actual administrative costs to the City to administer the tow franchise program.

This resolution further sets the maximum allowable rates to be charged by the tow provider to the vehicle owner in the amounts of \$ 175.00 as an hourly rate for tow services and \$45.00 for outside storage or \$50.00 for inside storage services, performed on behalf of the City pursuant to a tow company franchise agreement. The City has set the maximum rates to be charged by tow companies such that those rates will be reasonable and fair to all concerned.

This resolution further provides that the franchise fee and administrative impound charge, may be changed from time to time by separate resolution of the City Council when necessary for City to recover its actual costs to administer the program, and tow and storage rates may also be changed from time to time by separate resolution of the City Council as necessary and in keeping with City's policies, and state and local guidelines, when applicable.

Attachment: Draft Resolution

RESOLUTION NO. 2009- ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO
AMENDING THE MASTER FEE SCHEDULE AND SETTING ANNUAL TOW
SERVICE PROVIDER FRANCHISE FEES; APPROVING AN ADMINISTRATIVE
VEHICLE IMPOUND COST RECOVERY CHARGE; AND APPROVING MAXIMUM
TOWING AND STORAGE RATES FOR TOWING AND STORAGE SERVICES
PERFORMED ON BEHALF OF THE CITY OF CALEXICO PURSUANT TO A TOW
COMPANY FRANCHISE AGREEMENT**

WHEREAS, on September 1, 2009, the City Council of the City of Calexico approved Towing Services Ordinance, No. [____], and authorized the City Council to award one or more franchises for towing services based on a per vehicle tow charge; and

WHEREAS, California Vehicle Code section 12110(b) authorizes tow providers to pay an annual franchise fee to cities for the right to perform City generated tows pursuant to a franchise agreement, but further providing that in no event shall the franchise fee exceed the actual costs to administer the tow franchise program; and

WHEREAS, after study and discussions carried on by City staff, the City determined that the franchise should be based on the actual costs to administer the tow franchise program. In the event more than one franchise is awarded, the total annual administrative costs will be shared equally by the total number of tow providers authorized to participate in the program; and

WHEREAS, under the terms of the franchise agreement, the tow provider would pay the City, as consideration for the franchise right to perform City-generated tows, an annual franchise fee imposed at the beginning of each term of the franchise agreement in accordance with the terms of the agreement; and

WHEREAS, based on the estimated cost and number of tows in the previous year, the annual franchise fee for the initial term has been determined by the City of Calexico Police and Finance Departments to be \$2,500.00. Such annual fee may be adjusted annually for inflation; and

WHEREAS, the City of Calexico Police Department or its designee impounds or stores various vehicles from highways, public property, or private property in the City of Calexico during the normal course of duty; and

WHEREAS, the City of Calexico or its designee impounds or stores vehicles pursuant to its authority under California Vehicle code sections 22650 through 22669; and

WHEREAS, California Vehicle Code section 22850.5 authorizes cities, by ordinance or resolution, to establish a vehicle impound administrative charge to the registered owner, or agent thereof, relating to the removal, impound, storage, or release of vehicles; and

WHEREAS, situations may arise that warrant the exercise of prudent discretion to forego or excuse the proposed impound administrative charge; and

WHEREAS, the estimated administrative cost to the City of Calexico for an officer's time and vehicle mileage for completing a vehicle removal, impound, storage, or vehicle release has been determined by the City of Calexico Police Department to be \$290.00; and

WHEREAS, such impound administrative charge may be adjusted annually for inflation; and

WHEREAS, the City of Calexico ("City") has determined to enter into tow service franchise agreements with tow companies to provide towing and storage service to City; and

WHEREAS, California Vehicle Code section 22671 authorizes cities to enter into franchise agreements or contracts with tow companies to provide services relating to the removal, impound, storage, or release of vehicles; and

WHEREAS, in the public interest, convenience, and necessity, the City finds that rates charged by tow companies under franchise with the City shall be reasonable and fair; and

WHEREAS, the City Council shall set forth the maximum rates to be charged by the franchisee to the vehicle owner; and

WHEREAS, notice of this proposal to set rates has been provided pursuant to state law; and

WHEREAS, the fees as set forth in this Resolution shall be added to the City's Master Fee Schedule and revised annually for inflation pursuant to such Schedule.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. The annual franchise fee of Two thousand Five Hundred dollars (\$2,500.00) to be paid by the tow provider to City will be calculated based on the cost to the City to administer the tow service program.
2. Pursuant to Vehicle Code section 22850.5, the administrative fee for the recovery of impounded vehicles shall be set at Two Hundred Ninety dollars (\$290.00) and shall be effective upon adoption of this Resolution.
3. The victims of stolen or embezzled vehicles shall be exempt from this administrative fee when their vehicles are released from impound.
4. The Calexico Police Department may, in the exercise of its discretion, forego or excuse this administrative fee when deemed appropriate by the City of Calexico Chief of Police.

5. The annual franchise fee and/or the administrative fee may be adjusted from time to time by separate resolution of the City Council when such adjustment is necessary for City to recover its actual costs to administer the program and/or adjusted annually for inflation with the City's Master Fee Schedule.
6. The rate charged to a vehicle owner for tow services by a franchisee shall not be in excess of Two Hundred dollars (\$200.00) as an hourly rate.
7. The rate charged to a vehicle owner for storage of a vehicle by a franchisee shall not be in excess of forty five dollars (\$45.00) for outside storage or fifty dollars (\$50.00) for inside storage.
8. Storage rates shall be charged by the calendar day except that vehicles stored eight hours or less shall be charged no more than one day storage.
9. Storage and/or towing rates may be adjusted from time to time by separate resolution of the City Council as necessary in keeping with City's policies, and state and local guidelines, when applicable.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Calexico, California, held on the 22nd day of September, 2009.

CITY OF CALEXICO

DAVID B. OUZAN, MAYOR

ATTEST:

LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF CALEXICO)

I, Lourdes Cordova, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Resolution No. 2009-____ was duly and regularly adopted at a regular meeting of the City Council of the City of Calexico, California held on the [] day of [], 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

(SEAL)

LOURDES CORDOVA, CITY CLERK

CITY OF CALEXICO
REQUEST FOR PROPOSALS # _____
FOR: TOW SERVICES PERFORMED ON BEHALF OF THE CALEXICO POLICE
DEPARTMENT

NOTICE TO PROPOSERS

Notice is hereby given that the City of Calexico invites sealed responses for TOW SERVICES PERFORMED ON BEHALF OF THE CALEXICO POLICE DEPARTMENT, ("CPD") under Request For Proposals ("RFP") # _____.

Each RFP shall be in accordance with the conditions and specifications on file in the business office of the Calexico Police Department, 420 E. Fifth Street, Calexico, CA 92231, where copies of said conditions and specifications may be inspected or obtained at no charge. All proposals must be on the form provided, enclosed in a sealed envelope and clearly identified with title, name of proposer. Proposals shall be delivered to the Chief of Police at the above indicated address on or before **1:00 p.m., November 12, 2009. NO LATE RESPONSES WILL BE ACCEPTED or CONSIDERED.**

The City of Calexico reserves the right to award or reject proposals in part or in whole and on any basis it deems in the best interest of the City.

Reference is hereby made to said specifications for further details which general terms and conditions, specifications, and this "Notice to Proposers" shall be considered part of any contract made pursuant thereto.

James L. Neujahr
Chief of Police, City of Calexico

PUBLISHED: _____, 20__

CLOSING: _____, 20__

CITY OF CALEXICO
REQUEST FOR PROPOSAL # _____

FOR: TOW SERVICES PERFORMED ON BEHALF OF THE CALEXICO POLICE
DEPARTMENT
GENERAL TERMS & CONDITIONS

1. Notice is hereby given that the City of Calexico, Imperial County, California, will receive sealed quotes for **TOW SERVICES PERFORMED ON BEHALF OF THE CALEXICO POLICE DEPARTMENT.**
2. Each proposal shall be in accordance with specifications on file in the business office of the Police Department, City of Calexico, 420 E. Fifth Street, Calexico, CA 92231, where a copy may be obtained at no charge.
3. **Each response shall be sealed and filed with the Chief of Police at 420 E. Fifth Street, Calexico, CA 92231 prior to 1:00 P.M., November 12, 2009. It is the contractor's responsibility to ensure that responses are received prior to the 1:00 P.M. response closing time. **LATE PROPOSALS WILL NOT BE ACCEPTED!****
4. Each response must be accompanied by a **complete copy** of these specifications and proof that proposer possesses a valid City of Calexico business license. **Please submit a total of three (3) sets – one (1) signed original and two (2) copies. Please note you must submit two (2) original copies of "Attachment A". Once fully executed an original will be sent back to your company if all the requirements qualify.**
5. All prices must be typed or written in ink. **Responses written in pencil will not be accepted.** Mistakes may be crossed out and corrections inserted adjacent, but the correction must be initialed in ink **by the person signing the proposal.**
6. Any claim of error by a contractor must be made before the time of the opening, otherwise it shall be deemed waived.
7. The City reserves the right to reject any and all RFP's on any basis deemed in the best interest of the City. Any changes, omissions, or variations in specifications or conditions of RFP may be considered cause of rejection.
8. No proposer may withdraw his or her RFP for a period of sixty (60) days after the date set for the opening thereof.
9. The proposer, by submitting their response, agrees to save, defend, keep, bear harmless, and fully indemnify the said City and any of its officers, officials, agents, employees, or volunteers from all damages, claims for damages, costs, or expenses, whether in law or in equity, that may at any time arise or be set up for an infringement of the patent rights, copyrights, or trade-marks of any person or persons in consequence of the use by said City, or by any of its officers, officials, agents, employees, or volunteers or articles to be supplied under this proposal.

10. The City of Calexico recognizes that the proposals may include proprietary or confidential information. The City will take every reasonable precaution in protecting such information provided that it is clearly identified as proprietary or confidential on the page on which it appears. However, the City is subject to the California Public Records Act and must disclose records as required by the Act. Proposals and pricing information submitted as a part of this RFP will not be returned.
11. By submitting a response to this RFP, each proposer expressly waives any and all rights that it may have to object to, protest or seek legal remedies whatsoever regarding any aspect of this request, the City's selection of the tow franchise, the City's rejection of any or all responses, and any subsequent agreement that might be entered into as a result of this request.
12. Pursuant to Municipal Code Section 10.58.040(B), this RFP will be awarded to the contractors the City Council deems best qualified to perform tow services on behalf of Calexico. The determination of which proposals indicate the best qualified applicants shall be based upon but not limited to, the following considerations:
 - a. Cost;
 - b. The ability, capacity, and skill of the contractor to perform the contract or provide the services or equipment required;
 - c. The ability of the contractor to provide the services or equipment promptly or within the time specified without delay or interference;
 - d. The character, integrity, reputation, judgment experience, and efficiency of the contractor;
 - e. The quality of the contractor's performance on previous contracts, if any, with the City.

Upon receipt of all responses and determination of the response which represent the best qualified applicants, the City will enter into negotiations, if required, with the selected tow operator(s) regarding the final contract terms and condition, per the Calexico Municipal Code Section 10.58.040(A).

13. Responses deviating in any way from the RFP and submission format may be declared non-responsive. All blanks in specifications must be filled in or response will be considered non-responsive.
14. The contractors must comply with the SAE standards and meet all OSHA, State of California and Federal Industrial Safety Orders, and regulations in effect on the date of this request for qualification.
15. The City of Calexico will furnish exemption certificates for all federal taxes, if required. California State, Imperial County, and City of Calexico taxes are applicable and shall be shown separately.

16. Before submitting response, contractors must read the Tow Franchise Agreement and Ordinance and complete all required documents.
17. Any questions regarding submitting procedures or the scope of the RFP may be directed to the Lieutenant Jesus Serrano at (760) 768-2146, **questions should be submitted in writing and emailed to Lieutenant Serrano at police@calexico.ca.gov.**
18. Contractor's attention is directed to the following Insurance Requirements. It is highly recommended that proposers confer with their respective insurance carriers or brokers to determine in advance of submission the availability of insurance certificate and endorsements as prescribed and provided herein. If a contractor deemed best qualified fails to comply strictly with the insurance requirements, that contractor may be disqualified from award of the contract.

CITY OF CALEXICO
REQUEST FOR PROPOSAL #
FOR: TOW SERVICES PERFORMED ON BEHALF OF THE CALEXICO POLICE
DEPARTMENT
INSURANCE REQUIREMENTS

INSURANCE

- A. Throughout the life of this Agreement, Tow Operator shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by the City Manager. The following policies of insurance are required:

(i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be on the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 per occurrence for products and completed operations
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate applying separately to the work performed under the Contract
\$500,000 Garagekeepers
\$250,000 On Hook/Cargo for Class A and Class B tows
\$500,000 On Hook/Cargo for Class C and Class D tows

(ii) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be on the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto) with limits of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) **WORKERS' COMPENSATION** insurance as required under the California Labor Code. **Proof of Workers' Compensation insurance must be submitted with the bid proposal.**

(iv) **EMPLOYERS' LIABILITY** insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease

each employee.

Tow Operator shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tow Operator shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation, change or reduction of coverage. **In the event any policies are due to expire during the term of this Agreement, Tow Operator shall provide a new certificate and all applicable endorsements evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Tow Operator shall file with the Tow Coordinator a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Tow Operator's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. **Tow Operator shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement.** Tow Operator shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the life of the Agreement or any extension, Tow Operator fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Tow Operator shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. **Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.**

CITY OF CALEXICO
REQUEST FOR PROPOSAL #
FOR: TOW SERVICES PERFORMED ON BEHALF OF THE CALEXICO POLICE
DEPARTMENT
SPECIFICATION

It is the intention of the City of Calexico to award a Tow Service Franchise Agreement to one or more qualified tow applicants for the period of three (3) years effective November 25, 2009. The initial term of this Agreement shall be for a total period of three (3) years commencing on the effective date of Agreement. City shall have the right, at its sole discretion, to extend the Agreement for one (1) additional two-year period. If City exercises its option to extend, City shall notify Tow Operator(s) sixty (60) days prior to the expiration of the Agreement. In the event that City extends the Agreement, the Parties shall enter into a written amendment subject to the same terms and conditions set forth in this Agreement.

Tow Operator shall maintain all of the following tow equipment:

Tow Operator shall equip and maintain tow trucks for both Class A and Class B tows in accordance with the provisions set forth in the California Vehicle Code.

Equipment for Class A tows are required.

All Class B tow trucks with a Gross Vehicle Weight Requirement (GVWR) of less than 26,001 pounds currently approved for the CPD rotation tow list will be allowed to remain on the rotation tow list until January 30, 2011.

Tow Operator may, at its discretion, maintain the following tow equipment for Class C and Class D:

Tow Operator shall equip and maintain tow trucks for both Class C and Class D tows.

All Class C tow trucks with a GVWR of less than 48,000 pounds currently approved for the CPD rotation tow list will be allowed to remain on the rotation tow list until January 30, 2011.

Tow Operator shall ensure that a minimum of one (1) Class D tow vehicle rated at a minimum of 50,000 lb. GVWR is available for tow services. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

TOW OPERATORS' REQUIREMENTS

The Tow Operator shall ensure that tow truck drivers responding to calls initiated by the CPD are qualified and competent employees of the Tow Operator. The Tow Operator shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through CPD. Tow truck drivers shall be at least 18 years of age and shall possess the proper class license and certificates for the towed and towing vehicle. Class A licenses must be endorsed to allow operation of special vehicle configurations and/or special cargoes. All training documentation shall be submitted to CPD for each tow truck driver. After November 12, 2009, all drivers whose training documentation is over five (5) years old, shall resubmit current proof of training documentation from a CHP approved program.

The Tow Operator shall provide a current list of tow truck drivers and employees to the CPD upon execution of this Agreement. The Tow Operator shall immediately notify the CPD upon any change in driver or employee status, including the addition of any new driver(s) or employee(s), or the deletion of any driver(s) or employee(s). Before any drivers or employees work for any Towing Operator for the CPD, the driver or employee must first pass a criminal background and driving record check performed by the CPD at the tow operator's expense and any drivers must be enrolled in the Pull Notice Program as required by the Vehicle Code. The Tow Operator will be notified in writing upon CPD's approval of any driver or employee. Thereafter, the driver or employee will be qualified to work for or perform tows on behalf of the Tow Operator.

Tow Operators shall, at a minimum, maintain the following information for each employee:

- 1) Full legal name
- 2) Date of birth
- 3) California driver's license number
- 4) Copy of valid medical certificate (if required)
- 5) Job title/description
- 6) Current home address
- 7) Current home phone number
- 8) Type(s) of truck(s) the driver(s) has/have been trained to operate
- 9) Current Pull Notice as required by California Vehicle Code section 1808.1.

Tow Operator shall submit information to the CPD including, but not limited to:

- 1) Tow Operator name and address
- 2) If Tow Operator is a partnership, the name and address of each partner. If Tow Operator is a corporation, the names and addresses of the corporation's directors, main office, major stockholders and associates, and the names and addresses of the parent and subsidiary companies
- 3) A list of all vehicles, including license plate numbers and vehicle identification numbers, to be used in connection with the franchise
- 4) Such other and further information as the Chief of Police may reasonably require to evaluate Tow Operator's qualification to provide towing services.

Tow Operator shall display in plain view at all cashier stations, a sign as described in Section 3070 of the California Civil Code, disclosing all storage fees and charges in force, including the maximum storage rate.

A copy of the schedule of rates charged by the Tow Operator shall be available in each of the tow trucks, and shall be presented upon demand to the person(s), or his/her agent, for whom the tow services were provided, or to any CPD officer at the scene.

All Tow Operators will possess a working fax machine that will meet the following specifications: Plain paper fax reception, 600 dpi copy quality, a minimum of 25 pages of memory, and a 150 sheet paper tray, they must also have a dedicated phone line for the fax machine on their premises. Fax machines shall be available to receive faxes 24 hours a day, 7 days a week, and 365 days a year.

STORAGE FACILITIES

Provisions shall be made for adequate security of vehicles and property at the place of storage. A minimum six-foot fence or enclosed area shall be provided for outside storage and have storage space inside a locked indoor building for at least two (2) vehicles. Storage lot size shall be a minimum of 5000 square feet, and room for 20 vehicles, and shall be located within the limits of the City of Calexico. In addition, the facility shall be well lit and should include surveillance cameras. The primary storage facility shall be at the same locations as the business address. If not at the same location, there shall be no charge for any additional distance traveled to and from a secondary location. The vehicle and/or personal property shall be released at the primary storage facility or place of business (when the primary storage facility and the place of business are not at the same location) upon request of the owner or a person having a legal entitlement to the vehicle and/or property. The primary business, storage facility, and records must be within the City limits. The Tow Operator shall not employ nor allow any person to loiter around the storage facility or the Tow Operator's place of business that has been convicted of a crime of moral turpitude or has been convicted of a felony.

INSPECTIONS

The Tow Operator shall arrange with the Calexico Police Department for inspection for new or replacement tow trucks prior to placing them in service. The CPD may conduct additional inspections without notice during normal business hours before or during any special operations. Re-inspection of any tow truck that fails an inspection shall be arranged with the Calexico Police Department. Failure to pass re-inspection shall be cause for the disqualification of the tow truck from use on the CPD tows.

FINANCIAL INTEREST

No Tow Operator or applicant shall be directly involved in the towing related business of any other Tow Operator or applicant for tow services within the City.

Storage facilities owned by an operator, and shared with another operator, shall only be approved if the owner/operator charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof. Facilities shared by operators shall be physically separated and secured from each other.

The Tow Operator shall have a current, valid City of Calexico business license at the time of the award of the franchise and at all times during the term of this Agreement. All fees, including current or delinquent, must be paid in full. All Tow Operators, drivers and employees will comply with all Federal and State laws along with City of Calexico ordinances and zoning requirements.

All Tow Operators, employees, and each driver shall be required to pass a background check. Tow drivers must pass a background prior to being placed on the list for rotational tows. Each Tow Operator, employee and/or driver will be required to submit a completed employee information form to the Tow Coordinator or designee upon request by CPD. Tow Operator shall be required to maintain these records and make them available to CPD upon request.

AWARDING OF CONTRACT

Award of contract shall be based on Tow Operator's overall compliance with the requirements of the specifications, general terms and conditions, completion of the attachments, ability to provide required insurance certificates with endorsement pages, past experience in vehicle tow and years of service.

Before award of contract, the City will consider all data and may request additional information from the proposers as deemed necessary.

"ATTACHMENT A"
NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR TOW SERVICES
BETWEEN
CITY OF CALEXICO AND

This Non-Exclusive Franchise Tow Service Agreement, hereinafter referred to as ("Agreement"), is entered into this _____ day of _____, 20__ ("Effective Date"), at Calexico, California, between the City of Calexico, a municipal corporation ("City") and _____, ("Tow Operator").

RECITALS

1. City requires vehicle towing and storage services and desires to enter into a non-exclusive franchise agreement for those services.
2. City issued a Request for Proposal ("RFP") for a towing franchise within the City that included the terms and conditions set forth in this Agreement.
3. _____ (insert name of Tow Operator) responded to the RFP and City desires to enter into the franchise Agreement with _____ on the basis of Tow Operator's responsiveness to the criteria set forth in the RFP.
4. City has the authority under state and federal law to regulate a tow franchise within its boundaries and to charge a reasonable fee to reimburse City for the costs of administering such franchise and the regulations adopted pursuant to the franchise Agreement.
5. Tow Operator agrees that City has the authority to enforce the terms and conditions in this Agreement and to charge the fees as adopted by the City.

Now, therefore, the Parties enter into the tow franchise agreement on the following terms and conditions:

AGREEMENT

This Agreement contains rules and regulations that a Tow Operator agrees to comply with in order to be placed and maintained on the rotation tow service list with the City of Calexico Police Department ("CPD"). Participation in the CPD Tow service program is voluntary, however, compliance with all terms and conditions of the Agreement is mandatory for Tow Operator. The rendering of services by a Tow Operator under the provisions of the Agreement does not make the Tow Operator an agent of CPD or the City of Calexico. CPD is a department of the City and delegated the responsibility of operating the City's Tow service program. CPD shall appoint and delegate to an individual the responsibility for administration of

the Tow Program that is defined herein as the "Tow Coordinator."

Section 1. DEFINED TERMS

1.1 "Agreement" means the Non-Exclusive Franchise Agreement for Tow Services entered into between the City of Calexico and a tow service provider referred to as "Tow Operator."

1.2 "Chief of police" means the chief of police of the police department of the City of Calexico.

1.3 "City" means the City of Calexico.

1.4 "Tow Service Program" means the services required to be provided pursuant to the Non-Exclusive Franchise Agreement for Tow Services.

1.5 "Tow Coordinator" means the individual appointed by the Calexico Police Department who is responsible for the administration of towing services.

1.6 "Tow Operator" means the company providing tow services and duly authorized employees, agents, assignees or designees.

1.7 "Minor Violation" means a violation of the terms and conditions of this Agreement for which the Chief of Police has discretion regarding whether to impose disciplinary action and/or to deem what level of discipline is appropriate.

1.8 "Major Violation" means a violation of the terms and conditions of this Agreement that are subject to mandatory suspension for a first violation.

Section 2. ROTATION LISTS

- A. If more than one franchise is awarded, the CPD shall maintain a rotation tow list to ensure an equitable distribution of calls. A call to a Tow Operator shall constitute one turn on the list after which the operator shall be moved to the bottom of the list. When the Tow Operator is unable to answer the phone, is unable to respond, is unable to perform the required service, they will forfeit that tow and be placed on the bottom of the rotation list. When the Tow Operator refuses to respond or provide service, or is canceled due to an excessive response time, the Tow Operator shall be removed from the rotation tow list for one rotation, thereby forfeiting any right to its next tow. In the event the Tow Operator fails to cancel a request for tow services within 10 minutes of notification by CPD, or arrives beyond the allowed 30 minutes, the Tow Operator will be placed at the bottom of the rotation. It is the Tow Operators responsibility to coordinate with dispatch to ascertain the location of the officer and tow site. If it is determined that the Tow Operator is not needed and is canceled by the CPD,

up to and including upon arrival at the scene, there shall be no charges and the Tow Operator will be placed back at the top of the rotation list. The CPD shall maintain separate lists for specialized towing needs.

- B. If two or more tow truck drivers are called to the same incident, distribution of the vehicles shall be at the discretion of the CPD officer in charge of the scene.
- C. The CPD may direct a rotation Tow Operator to move vehicles to help clear a roadway or for lifesaving operations. Tow Operators shall provide the assistance as directed and will not be entitled to additional compensation for this assistance. The assistance provided shall not change the Tow Operator's place in the rotation.
- D. The CPD may conduct special operations throughout the year that requires tow companies at the location of the special operation. Tow Operators on the rotation tow list that are in good standing (as defined within this section) with the CPD may be invited to participate in these operations on condition that they are willing to remain with the special operation until its conclusion. "Good standing" shall mean that the Tow Operator has not violated, or is not in violation, of the terms of this Agreement or the provisions of the Calexico Municipal Code. Denial of a Tow Operator's opportunity to participate in any special operation may be appealed using the appeal process for revocation or suspension of a franchise as set out in Calexico Municipal Code Section 10.58.120. All special operations tows will be subject to the provisions of this Agreement.
- E. Tow operator(s)/driver(s) will not be permitted to drive a vehicle from a CPD rotation call or special operation. Any exceptions must be at the direction of the officer.

Section 3. TERM

The initial term of this Agreement shall be for a total period of three (3) years commencing on the effective date of this Agreement. City shall have the right, at its sole discretion, to extend the Agreement for one additional two-year period. If City exercises its option to extend, City shall notify Tow Operator sixty (60) days prior to the expiration of the Agreement. In the event that City extends the Agreement, the Parties shall enter into a written amendment subject to the same terms and conditions set forth in this Agreement.

Section 4. TOW TRUCK CLASSIFICATIONS

Tow Operator shall maintain all of the following tow equipment:

- A. Tow Operator shall equip and maintain tow trucks in accordance with the provisions set forth in the California Vehicle Code. Tow Operator may, at its discretion, maintain the following tow equipment:

- B. Tow Operator shall ensure that a minimum of one (1) Class D tow vehicle rated at a minimum of 50,000 lb. GVWR is available for tow services. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

Section 5. TOW OPERATORS' REQUIREMENTS

Tow Drivers

- A. The Tow Operator shall ensure that tow truck drivers responding to calls initiated by the CPD are qualified and competent employees of the Tow Operator. The Tow Operator shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through CPD. Tow truck drivers shall be at least 18 years of age and shall possess the proper class license and certificates for the towed and towing vehicle. Class A licenses must be endorsed to allow operation of special vehicle configurations and/or special cargoes. All training documentation shall be submitted to CPD for each tow truck driver. After November 12, 2009, all drivers whose training documentation is over five (5) years old, shall resubmit current proof of training documentation from a CHP approved program.
- B. The Tow Operator shall provide a current list of tow truck drivers and employees to the CPD upon execution of this Agreement. The Tow Operator shall immediately notify the CPD upon any change in driver or employee status, including the addition of any new driver(s) or employee(s), or the deletion of any driver(s) or employee(s). Before any drivers or employees work for any Towing Operator for the CPD, the driver or employee must first pass a criminal background and driving record check performed by the CPD at the expense of the tow operator, and any drivers must be enrolled in the Pull Notice Program as required by the Vehicle Code. The Tow Operator will be notified in writing upon CPD's approval of any driver or employee. Thereafter, the driver or employee will be qualified to work for or perform tows on behalf of the Tow Operator.

Tow Operators shall, at a minimum, maintain the following information for each employee:

- 1) Full legal name
- 2) Date of birth
- 3) California driver's license number
- 4) Copy of valid medical certificate (if required)
- 5) Job title/description
- 6) Current home address
- 7) Current home phone number

- 8) Type(s) of truck(s) the driver(s) has/have been trained to operate
 - 9) Current Pull Notice as required by California Vehicle Code section 1808.1.
- C. Upon determination of new drivers, an operator will be granted a maximum of 30 days to enroll the driver in the Pull Notice Program. Pull Notices shall be kept on file, signed, and dated by the operator. The Tow Coordinator may require an operator to provide copies of the Pull Notice Reports.
- D. All tow truck drivers and Tow Operators shall be enrolled in the Pull Notice Program as defined in California Vehicle Code section 1808.1 et seq.
- E. Tow Operator shall submit information to the CPD including, but not limited to:
- 1) Tow Operator name and address.
 - 2) If Tow Operator is a partnership, the name and address of each partner. If Tow Operator is a corporation, the names and addresses of the corporation's directors, main office, major stockholders and associates, and the names and addresses of the parent and subsidiary companies.
 - 3) A list of vehicles including license plate numbers and vehicle identification numbers, to be used in connection with the franchise.
 - 4) Such other and further information as the chief of police may reasonably require to evaluate Tow Operator's qualifications to provide towing services.
- F. Insurance must be current and a copy of an insurance certificate sent to the Tow Coordinator prior to its due date. If insurance is not current and a copy of the insurance certificate is not received by the Tow Coordinator, the Tow Operator will immediately be removed from the rotation until a current certificate is provided.
- G. If any tow operator or tow driver or employee of a Tow Operator has been removed, suspended, disciplined by any other public agency, including but not limited to CHP, Tow Operator must notify the Tow Coordinator in writing not later than twenty-four (24) hours.
- H. The CPD shall immediately suspend any operator or employee whose conduct, in the sole discretion of the Tow Coordinator, is deemed to threaten the health, safety or welfare of the public.
- I. The CPD may suspend any operator or employee who has engaged in conduct in violation of this Agreement.

Section 6. RATES

- A. Rates for towing services provided to CPD for police generated tows shall be in accordance with this Agreement. Fees charged for response to non-consensual tows originating from the CPD shall not exceed \$200.00 per hour. Any tows above the \$200.00 hourly rate must be sent in writing to the Tow Coordinator via facsimile or personal delivery within 24 hours. In the event that notice is not properly given, the increased rate will be void and the \$200.00 hourly rate will apply. Storage fees shall not exceed the CPD approved rates that are \$45.00 per day for outside storage and \$50.00 per day for inside storage. Storage fees shall be charged by calendar day except that vehicles stored eight hours or less shall be charged no more than one day storage. A gate fee of no more than one-half the hourly rate may be charged for the release of a vehicle after 5 p.m. on weekdays, or any time on weekends or holidays if Tow Operator is not normally open for business on weekends or holidays. There shall be no additional charge for using dollies. Tow Operators shall notify Tow Coordinator of any additional fees for specialized equipment, and provide a copy of listed rates for specialized equipment.
1. Inside storage may only be charged when one of the following circumstances exists:
 - a) CPD authorized the vehicle to be stored inside as evidence;
 - b) CPD authorizes the storage;
 - c) When requested by the registered owner, legal owner, or insurance company.
 - d) If the Tow Operator chooses to store the vehicle inside for safekeeping, they may only charge the outside rate, unless approved by tow coordinator prior to release.
 2. During the term of this Agreement, the Tow Operator shall pay the City, as consideration for the non-exclusive franchise right to perform City generated tows pursuant to this Agreement, an annual franchise fee. The franchise fee will be set by City Council Resolution, at which time City will calculate the total cost to City to operate the tow program. The total amount of the costs will be shared equally, on an annual basis, by the Tow Operators who are issued a franchise by City. The initial franchise fee for the first year shall be payable at the time Tow Operator applies for a tow franchise pursuant to the City RFP. Thereafter, the annual franchise fee shall be due and payable for the second and third years on January 1st and delinquent by January 30th each year. Non-payment of the annual franchise fee is grounds for suspension or termination of the franchise agreement.

- B. Any Tow Operator who charges rates in excess of \$200.00 per hour for a CPD rotation call shall be in violation of this Agreement and subject to suspension and/or removal from the rotation tow list for a period of time to be determined by the Tow Coordinator.
- C. Tow Operator shall display in plain view at all cashier stations, a sign as described in Section 3070 of the California Civil Code, disclosing all storage fees and charges in force, including the maximum storage rate.
- D. Tow Operator may charge storage in accordance with California Civil Code section 3068.1 et seq. Each Tow Operator must submit to Tow Coordinator a copy of posted business days and hours. Should Tow Operator's business days and hours change, a written copy shall be submitted to Tow Coordinator within 24 hours. Tow Operators shall post in a clearly visible and conspicuous location its hours of operation and an after hours telephone number.
- E. The Tow Operator shall be able to properly conduct a lien sale as outlined in Division 11, Chapter 10, Article 2, beginning with Section 22851 of the California Vehicle Code. Tow Operator must get approval from the Chief of Police or the Chief's designee prior to placing a lien on any vehicle held for evidence purposes. No lien shall be placed upon any vehicle until the vehicle has been stored for over 72 hours. Failure to comply with this section will result in action in the form of a suspension and/or removal from the rotation tow list as determined by the Tow Coordinator.
- F. Persons operating or in charge of any storage facility where vehicles are stored shall accept a valid bank credit card or cash for payment of towing and storage by the registered owner, legal owner, or the owner's agent claiming the vehicle pursuant to California Vehicle Section 22651.1. Appropriate credit card equipment must be located on the premises and available for immediate processing from each tow truck. A Tow Operator, including Tow Operator's drivers and employees, who refuses to accept a valid bank credit card in the field or at the storage yard shall be liable to the registered owner of the vehicle for four times the amount of the towing and storage charges, but not to exceed five hundred dollars (\$500.00). In addition, a person operating or in charge of the storage facility shall have sufficient funds on the premises to accommodate and make change for a reasonable monetary transaction. Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code.
- G. A copy of the schedule of rates charged by the Tow Operator shall be available in each of the tow trucks, and shall be presented upon demand to the person(s), or his/her agent, for whom the tow services were provided, or to any CPD officer at the scene.
- H. All Tow Operators will possess a working fax machine that will meet the

following specifications: Plain paper fax reception, 600 dpi copy quality, a minimum of 25 pages of memory, and a 150 sheet paper tray, they must also have a dedicated phone line for the fax machine on their premises. Fax machines shall be available to receive faxes 24 hours a day, 7 days a week, and 365 days a year.

Section 7. RESPONSE TO CALLS

- A. Tow Operator pursuant to this Agreement shall be available on a 24 hour, 7 days a week basis. A reasonable response time is defined as thirty (30) minutes or less. Tow Operators shall be available to release stored vehicles on a 24 hour, 7 days a week basis. Response time to the office or storage facility where the stored vehicle is located shall be no more than thirty (30) minutes.
- B. In the event a Tow Operator is unable to respond or will be delayed in responding, the requesting CPD communications operator shall be notified immediately. City and Tow Operator agree that in the event services are delayed or not provided, City will suffer damages and incur other costs and expenses, which are difficult to determine. The Parties agree that by a way of fixing the amount of damages, costs and expenses, and not by way of penalty, Tow Operator shall pay to City the sum of \$125.00 per incident when Tow Operator is either (1) delayed more than thirty (30) minutes; (2) is unable to respond; (3) fails to notify CPD of any delay or non-response.
- C. Failure to respond to perform the required towing or service and/or failure to meet the requirements for Tow Operator shall constitute failure to comply with the terms and conditions this Agreement and may result in action including but not limited to suspension or revocation of the franchise, in addition to the liquidated damages set forth in Section 5(B) above. The Tow Coordinator may take immediate action for any violation of the requirement to respond with the response time set forth in this agreement.
- D. When a Tow Operator will be temporarily unavailable to provide services due to a preplanned or scheduled activity, the Tow Operator shall notify the Tow Coordinator, in writing, at least 24 hours prior to the date that services will be unavailable noting the times and dates of unavailability.

Section 8. STORAGE FACILITIES

- A. Provisions shall be made for adequate security of vehicles and property at the place of storage. A minimum six-foot fence or enclosed area shall be provided for outside storage and have storage space inside a locked indoor building for at least two (2) vehicles. Storage lot size shall be a minimum of 5000 square feet, and room for 20 vehicles, and shall be located within the limits of the City of Calexico. The primary storage facility shall be at the same locations as the

business address. If not at the same location, there shall be no charge for any additional distance traveled to and from a secondary location. The vehicle and/or personal property shall be released at the primary storage facility or place of business (when the primary storage facility and the place of business are not at the same location) upon request of the owner or a person having a legal entitlement to the vehicle and/or property. The primary business, storage facility, and records must be within the City. The Tow Operator shall not employ nor allow any person to loiter around the storage facility or the Tow Operator's place of business that has been convicted of a crime of moral turpitude or has been convicted of a felony.

- B. The Tow Operator shall release personal property from an impounded vehicle at the request of the vehicle owner or his/her agent. There shall be no charge for the release of personal property during normal business hours. Tow Operators may charge an "after hours" release fee for property released after normal business hours. The fees charged shall be consistent with the "after hours" vehicle release provisions, and shall not charge more than one-half the hourly rate, as provided in California Vehicle Code section 22851(B). Tow Operator shall not charge City for any "after hours" access to any vehicle impounded or stored.
- C. Personal property is considered to be items located within the stored vehicle that are not affixed to the vehicle, including but not limited to, papers, transportable cellular telephones, pull-out radios, portable radios and/or portable stereo equipment, clothes, luggage, tools, etc.
- D. The Tow Operator shall provide a receipt, with a copy placed in the stored vehicle and a copy to CPD, whenever any item is removed from a stored vehicle and taken to another place of storage.
- E. Prior to the utilization of new storage facilities not listed on the application for rotation tow listing, the Tow Operator shall furnish the address of the new storage facility and obtain the Tow Coordinator's approval.

Section 9. INSURANCE

- A. Throughout the life of this Agreement, Tow Operator shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company (ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

- (i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be on the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily

injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of not less than the following:

- \$1,000,000 per occurrence for bodily injury and property damage
- \$1,000,000 per occurrence for personal and advertising injury
- \$2,000,000 per occurrence for products and completed operations
- \$2,000,000 aggregate for products and completed operations
- \$2,000,000 general aggregate applying separately to the work performed under the Contract
- \$500,000 Garagekeepers
- \$500,000 On Hook/Cargo

(ii) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be on the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto) with limits of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

(iv) **EMPLOYERS' LIABILITY** insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Tow Operator shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tow Operator shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation, change or reduction of coverage. **In the event any policies are due to expire during the term of this Agreement, Tow Operator shall provide a new certificate and all applicable endorsements evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Tow Operator shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be

written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional named insured. Such policy (ies) of insurance shall be endorsed so Tow Operator's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. **Tow Operator shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement.** Tow Operator shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the life of the Agreement or any extension, Tow Operator fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Tow Operator shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

Section 10. INSPECTIONS

The Tow Operator shall arrange with CHP for inspection for new or replacement tow trucks prior to placing them in service. Tow Operator shall provide proof of all CHP inspections to CPD. The CPD may conduct additional inspections without notice during normal business hours before or during any special operations. Re-inspection of any tow truck that fails an inspection shall be arranged with the CHP. Failure to pass re-inspection shall be cause for the disqualification of the tow truck from use on the CPD tows.

Section 11. FINANCIAL INTEREST

- A. No Tow Operator or applicant shall be directly involved in the towing related business of any other Tow Operator or applicant for tow services within the City.
- B. Storage facilities owned by an operator, and shared with another operator, shall only be approved if the owner/operator charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof. Facilities shared by operators shall be physically separated and secured from each other.
- C. The sale or transfer of the controlling interest in a company shall immediately terminate the Agreement. A new owner may apply for a rotation tow listing at any time during the remainder of the current Agreement term, regardless of the open enrollment period.

- D. A terminated or suspended Tow Operator, during the time of the suspension or termination, shall not be eligible for a rotation listing for the duration of the suspension or termination. This provision applies to the Tow Operator working in any capacity within any tow business or operating any tow business, and to the tow business, even if operated under new ownership.

Section 12. DEMEANOR AND CONDUCT

- A. While involved in CPD rotation tow operations or related business, the operator and its employee(s) shall refrain from any act(s) of misconduct, including but not limited to any of the following:
1. Rude or discourteous behavior directed towards CPD personnel or citizens for whom service is provided. "Rude or discourteous behavior" shall mean any act that would insult, aggravate, disturb or frustrate a person of reasonable sensibilities, which act(s) shall include, but is not limited to, using profanity or foul language, manifesting an uncooperative and/or angry demeanor, performing acts of vandalism, failing to respond to questions in a courteous and professional manner, intentionally misrepresenting rates or tow procedures or attempting to manipulate rates or tow procedures at the detriment of a citizen or the CPD personnel.
 2. Below standard service, selective service, or refusal to provide service that the operator is or should be capable of performing;
 3. Any act of sexual harassment or sexual impropriety;
 4. Unsafe driving practices; or
 5. Exhibiting any objective symptoms of alcohol and/or drug use while performing tow service for CPD.
- B. The Tow Operator and/or tow truck driver shall submit to a preliminary alcohol screening test upon demand of the CPD, while answering a call originating from the CPD rotation tow list. Any positive test will result in the loss of the tow by that tow company, and may result in the removal from the rotation tow list.
- C. All CPD related tow service complaints received by the CPD against the operator or its employee(s) will be accepted and investigated in a fair and impartial manner. As a result of the investigation, the CPD may initiate disciplinary action as deemed appropriate. The Tow Operator shall be notified of the results of any investigation.
- D. Should allegations of a criminal violation be made against a Tow Operator and/or

its employee(s), the CPD will conduct the investigation to conclusion or assist the lead investigating agency and, if warranted, request prosecution.

- E. Any violation of this Agreement or any terms of Calexico Municipal Code Chapter 10.58 is cause for suspension or removal, if deemed appropriate by the CPD.

Section 13. COMPLIANCE WITH LAW

- A. The Tow Operator and its employee(s) shall, at all times, comply with federal, state, and local laws and ordinances.
- B. The Tow Operator shall have a current, valid City of Calexico business license at the time of the proposal for Tow Services and at all times during the term of this Agreement. All fees, including current or delinquent, must be paid in full. All Tow Operators, drivers and employees will comply with all Federal and State laws along with City of Calexico ordinances and zoning requirements.
- C. In the event of a traffic violation committed by the tow truck driver that is observed by the CPD, the Tow Operator shall be advised of the violation(s) and any enforcement action taken. The Tow Operator shall take necessary steps to ensure that its drivers are in compliance with the law. Any subsequent traffic violation(s) may be cause for disciplinary action against the Tow Operator and/or the involved employee(s).
- D. Any traffic violation as defined in California Vehicle Code, Division 11, that occurred during actual operation of a motor vehicle may be cause for immediate disciplinary action against the Two Operator and/or the involved employee as appropriate.
- E. The provisions contained in this Agreement, Compliance with Law, do not preclude the CPD from taking appropriate enforcement or administrative action for any violation(s) of law.
- F. Any past and/or present conviction of the following crimes by the Tow Operator may be cause for removal of the Tow Operator from the rotation tow list:
 - 1. a conviction involving a stolen or embezzled vehicle or any felony;
 - 2. fraud;
 - 3. stolen or embezzled property;
 - 4. a crime of violence;
 - 5. a crime of moral turpitude;
 - 6. a drug related offense;
 - 7. any crime that requires registration with the State of California as a sex

- and/or arson offender; or
 - 8. misdemeanor or felony driving while under the influence of alcohol and/or a drug.
 - 9. any outstanding warrant issued by any court of law whether local, state or federal in the United States.
- G. Any past or present conviction of the following crimes by an employee of a Tow Operator may be cause for removal from the rotation tow list:
 - 1. a conviction involving a stolen or embezzled vehicle or any felony;
 - 2. fraud;
 - 3. stolen or embezzled property;
 - 4. a crime of violence;
 - 5. a crime of moral turpitude;
 - 6. a drug related offense;
 - 7. any crime that requires registration with the State of California as a sex and/or arson offender;
 - 8. misdemeanor or felony driving while under the influence of alcohol and/or a drug; or
 - 9. any outstanding warrant issued by any court of law whether, local, state or federal in the United States.
- H. All Tow Operators, employees, and each driver shall be required to pass a background check. Tow drivers must pass a background prior to being placed on the list for rotational tows. Each Tow Operator, employee and/or driver will be required to submit a completed employee information form to the Tow Coordinator or designee upon request by CPD. Tow Operator shall be required to maintain these records and make them available to CPD upon request.
- I. Any person required by the State of California to register as a sex and/or arson offender shall have no involvement with the public as it relates to the towing, releasing of vehicles, or collecting of monies of any CPD rotational tow.
- J. Any tow drivers that obtain four or more violation point by counts in a 12 month period, six or more violation point counts in a 24 month period or eight or more violation point counts in a 36 month period, as referred to in California Vehicle Code section 12810.5, shall not be allowed to participate in any tows as part of the CPD rotational tow list.

Section 14. DISCIPLINARY ACTION

- A. The Chief of Police or his designee shall take disciplinary action against Tow Operators and/or its employees, agents, or drivers for violations investigated and confirmed or sustained. Unless otherwise noted, the Chief of Police or his designee shall determine the period of suspension. The Chief of Police or his

designee shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this Agreement.

- B. Records of violations shall be retained by the CPD for at least 36 months and, may be released pursuant to the California Public Records Act.
- C. A violation of the equipment requirements related to safety shall be cause for immediate suspension. The suspension will remain in effect until the period of suspension is completed and the CPD has conducted an inspection and concluded the Tow Operator is in compliance.
- D. A violation of the GVWR and safe loading requirements of a tow truck may be cause for immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when in tow.
- E. A violation of intentionally overcharging or a pattern of overcharging shall be cause for suspension. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof to the CPD that reimbursement has been made to the aggrieved customer.
- F. CPD personnel shall not be offered gratuities and requests for gratuities shall not be honored by Tow Operators, and/or its employees, associates, or agents. A violation of this section shall be cause for suspension or termination.
- G. Failure of the Tow Operator or its employee(s) to comply with Sections 12 and 13 (Demeanor and Conduct, and Compliance with the Law) of this Agreement, may be cause for suspension if deemed appropriate by the CPD Police Chief or designee.
- H. Failure of the operator to comply with the inspection requirements of this Agreement will result in a suspension. The suspension will remain in effect until this period of suspension is completed and the Tow Operator has complied with the inspection requirement.
- I. Failure of the Tow Operator to send tow truck drivers on CPD calls who are qualified and competent employees shall be cause for suspension. The suspension shall remain in effect until the period of suspension is completed and the Tow Operator has presented proof to the CPD that the driver is qualified and competent.
- J. Failure of the Tow Operator to maintain the minimum insurance requirements set forth in this Agreement will immediately nullify the Agreement. The Tow Operator will be subject to an additional suspension for failure to notify the CPD

in advance of the insurance policy expiration or cancellation.

- K. Failure of the Tow Operator to satisfy a court order (including administrative orders by the administrative hearing officer or orders by the City Council) mandating reimbursement to the vehicle or property owner for the damage or loss that occurred while the vehicle was in his or her custody will result in a suspension and/or removal from the rotations tow list. The period of the suspension shall be determined by the Police Chief or his/her designee. The suspension will remain in effect until the period of suspension is completed and the Tow Operator has presented proof of reimbursement to the vehicle or property owner.
- L. A tow truck driver who is arrested for a misdemeanor driving under the influence of alcohol and/or drugs will be immediately removed from the rotation tow list.
- M. If the Tow Operator is serving a suspension for one year or more, the Tow Operator shall be required to comply with all terms and conditions of the current tow franchise agreement at the time of the reinstatement. Thus, so called "grandfather clauses" shall not apply to a Tow Operator who is suspended for a one year period or more. There will be no approval of equipment that is not in compliance with the equipment specifications contained in the tow franchise agreement in effect at the time of reinstatement.

Section 15. TERMS OF DISCIPLINARY ACTION

- A. Except as specifically stated in the Agreement, minor violations of the terms and conditions of the Agreement may be cause for disciplinary action in the following manner:
 - 1. First violation within a 12 month period – letter of reprimand.
 - 2. Second violation within a 12 month period – 1 to 30 day suspension.
 - 3. Third violation within a 12 month period – 60 to 90 day suspension.
 - 4. Fourth violation within a 12 month period – termination of the Agreement, or in the discretion of CPD or, additional suspensions for longer periods may be imposed if deemed appropriate.
- B. Violations of the terms and conditions of the Agreement that are subject to suspension for the first violation are categorized as major violations. Any subsequent or continuing major violation may be cause for termination.
 - 1. When considering disciplinary action for a major violation of the Agreement, the Tow Coordinator may take into consideration all major and minor violations that occurred within 36 months prior to the date of the current violation.

2. Termination shall be invoked if, in the CPD's judgment, continued participation in the Tow service program by the affected Tow Operator may result in a hazard to the public safety and/or welfare, or the Tow Operator has been convicted of a crime listed in Section 13(F).
 3. In lieu of termination, the CPD may impose additional suspensions for longer periods, if deemed appropriate.
- C. Nothing herein shall be deemed to prohibit the CPD from immediately suspending any operator or employee whose conduct, in the opinion of the Tow Coordinator, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a flagrant violation of the Agreement.
 - D. All felony convictions not specifically addressed under this Agreement shall result in permanent disqualification from the CPD rotation tow list.
 - E. The existence of three misdemeanor convictions as set out in Sections 13(F) and 13(G) of this Agreement shall result in permanent disqualification from the CPD rotation tow list.
 - F. All misdemeanor convictions addressed under Section 13(F) and 13(G) of this Agreement shall result in a five-year suspension from the Tow service program.
 - G. An operator/employee shall be disqualified from working on CPD's rotation tow list if the operator/employee has a conviction of any felony violations that occurred within the previous 7 years:
 - H. An operator/employee shall be disqualified for a proven history of convictions for driving under the influence of alcohol and/or drugs. This shall include three misdemeanor convictions of DUI within the previous 7 years or any consecutive year DUI conviction.
 - I. The following convictions shall result in a 10-year removal from the rotation tow list:
 - PC 261.5 – Statutory Rape
 - PC273(a) – Cruelty to Child
 - PC273(d) – Infliction of corporal punishment of child, which results in traumatic conditions
 - PC 450 – Arson
 - PC 453 – Possession of Fire Bomb
 - PC 459 – Burglary
 - PC 470 – Forgery
 - PC 477 – Counterfeiting Money
 - PC 484(e) – Theft of Access Card (i.e. bank, phone or credit card)

PC 484(f) – Forgery of Access Card or Signature
PC 484(g) – Fraudulent Use of Access Card
PC 487 and PC 489 – Grand Theft (including theft of firearm)
PC 496 – Receiving Stolen Property
PC 503 – Embezzlement
VC 2800 – Evading a Peace Officer
VC 10851 – Vehicle Theft
VC 20001 – Hit & Run Collision Causing Injury or Death

Section 16. NOTICES

A. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid. It is the Tow Operator's responsibility to inform the Tow Coordinator of any changes of address or contact information. Notice to the Tow Operator's employee and/or agent shall be deemed properly delivered when sent to the Tow Operator's address on record with the Tow Coordinator.

B. Notices to City shall be sent to: City of Calexico Police Department
Attention: Tow Coordinator
420 E. Fifth Street, Calexico, CA 92231
Ph: (760) 768-2146

C. Notices to Tow Operator shall be sent to:

Section 17. WAIVER

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

Section 18. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Imperial County, California.

Section 19. SEVERABILITY

The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

Section 20. INTERPRETATION

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

Section 21. EXHIBITS

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

Section 22. EXTENT OF AGREEMENT

Each party acknowledges that he/she has read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Tow Operator.

Section 23. MAINTENANCE OF RECORDS

- A. The Tow Operator shall maintain records of all tow services performed pursuant to this Agreement. The records will be maintained at the Tow Operator's place of business. Invoices shall at a minimum include a description of each vehicle, nature of service, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name, and truck used.
- B. The Tow Operator shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing, and non-CPD tows.
- C. The CPD may inspect all Tow Operator records without notice during normal business hours.
- D. Tow Operators shall permit the CPD to make copies of business records at their place of business, or to remove business records for the purpose of reproduction.

The CPD shall provide a receipt for any (original) records removed from the place of business.

- E. Records shall be maintained and available for inspection for a period of two years plus the current term of this Agreement.
- F. Failure of the Tow Operator to comply with the inspection requirements shall be cause for suspension.

Section 24. INDEPENDENT CONTRACTOR

In the furnishing of services provided for herein, the Tow Operator or its employee(s) are acting as an independent contractor. Neither the Tow Operator, nor any of its officers, associates, agents, or employees shall be deemed an employee of the City of Callexico for any purpose.

Section 25. ASSIGNMENT

This Agreement is personal to the Tow Operator and there shall be no assignment by the Tow Operator of its rights or obligations under this Agreement without the prior written approval of the City. Any attempted assignment by the Tow Operator, its successors or assigns, shall be null and void unless approved in writing by the City.

Section 26. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provision of this Agreement.

Section 27. APPEALS

Any applicant permanently removed from the rotation list or any person suspended or temporarily removed from the rotation list, shall have the right to appeal such order under the provisions of Section 10.58.120 of the Callexico Municipal Code. If no appeal is filed within the time prescribed, the action of the Police Chief or the Chief's designee shall be final. Notwithstanding any provision within Section 10.58.120 of the Callexico Municipal Code, any person permanently removed, suspended, or temporarily removed from the rotation list shall not be entitled to participate in any tows or be placed on the rotation list until such time as the Chief Administrative Officer determines they are entitled to be placed back on the Rotation List.

Section 28. INDEMNITY

- A. Tow Operator shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort

or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Tow Operator or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Tow Operator's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of City or any of its officers, officials, employees, agents or volunteers.

B. This section shall survive termination or expiration of this Agreement.

Section 29. INCONSISTENCY

In the event of any inconsistencies in the provisions of this Agreement and provisions of the Calexico Municipal Code, the Calexico Municipal Code shall govern and control.

Section 30. EARLY TERMINATION

Tow Operator may terminate this Agreement at any time before the normal expiration of the term by giving thirty (30) days prior written notice to City. Upon termination of the agreement by Tow Operator under this Section, City shall remove Tow Operator from tow rotation list. Tow Operator shall not be entitled to reimbursement of any portion of the annual franchise fee previously paid to City.

TOW OPERATOR APPROVAL

I certify that I have read and understand this Non-Exclusive Franchise Tow Service Agreement and agree to abide by all the provisions. The Tow Operator, and the agents and employees of the Tow Operator, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the City.

TOW OPERATOR:

By: _____
(Signature)

Name (printed)

Title

CITY OF CALEXICO

David B. Ouzan, Mayor

ATTEST:

APPROVED AS TO FORM:

Lourdes Cordova, City Clerk

Jennifer M. Lyon, City Attorney

"ATTACHMENT B"

[INSERT CH. 10.58]

“ATTACHMENT C”

**City Of Calexico
Tow Services Site Inspection**

Company's Name	
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INSTRUCTIONS

1. Rater shall inspect contractor operations to ensure contractor meets the minimum requirements as presented in Request for Proposal.
2. During inspection of each requirement, both rater and contractor shall initial form indicating compliance/non-compliance with RFP requirements.
3. Notes indicating any discrepancies from RFP requirements shall be noted in space provided below scoring category. Notes can be continued on the reverse side of score sheet.
4. Rater shall sign the last sheet indicating that the scoring was based upon equipment presented for inspection at the time of site inspection.

Criteria	MIDWEST RBO	DOES NOT MIDWEST RBO	CRD	TOW
One (1) Wheel Lift rated at 14,500 Gross Vehicle Weight (GVW)				
Notes:				
One (1) Roll Back rated at 14,500 GVW				
Notes:				
One (1) Medium Duty Flatbed rated at 2.5 tons or greater				
Notes:				
One (1) Medium Duty truck with wheel lift or sling capability rated at 15,000 to 20,000 Gross Vehicle Weight (GVW) or greater				
Notes:				

Criteria	MEETS REQ	DOES NOT MEET REQ	CPD	ROW
One (1) 3 Axle Semi-Tractor with hydraulic or electrical wheel lift or sling capability lift rated at 48,000 Gross Vehicle Weight (GVW) or greater.¹				
Notes:				
Each truck shall have an operational winch that is power-driven in both directions and equipped with an adequate braking system.				
Notes:				
Each truck shall be equipped with the lighting systems as required by California Vehicle Code (CVC) Sections 24605, 24606 and 25253. Additionally, trucks shall be equipped with utility lamp lighting systems that comply with CVC Section 25110.				
Notes:				

¹ Firms without large rig tow vehicle must sign affidavit at end of rating sheet.

Criteria	MEETS REQ	DOES NOT MEET REQ	CRD	TOW
Each truck shall carry the miscellaneous equipment required by CVC Section 27700. Additionally, each tow company shall maintain three (3) sets of dollies for use by tow trucks providing services to the City.				
Notes:				
Each truck responding to requests for police initiated towing and impound services shall, on both sides of the vehicle, conspicuously bear the company name, address and phone number(s) in lettering that complies with CVC Section 27907				
Notes:				

Criteria	MEETS REQ	DOES NOT MEET REQ	CBD	NOA
<p>Each truck responding to requests for police initiated towing and impound services shall be equipped with radio communications equipment capable of effecting two-way radio communications between the truck and the tow company's dispatching operation. Citizens Band radios shall not be used to meet this requirement.</p>				
Notes:				

<p>The City of Calexico will require a minimum of 5000 square feet, and room for 20 vehicles outside and 2 vehicles inside. The yard must be in conformance with applicable City zoning and building codes and be permitted as such. Proposed yards must also be able to be in full service by the beginning of the contract date. Yards proposed shall be secure and enclosed, at a minimum, by a six-foot high fence with adequate lighting.</p>				
Notes:				

Criteria	MEETS REQ	DOES NOT MEET REQ	CRD	TOW
Each truck responding to requests for police initiated towing and impound services shall be well maintained and clean on the exterior and interior and should reflect the clean image of the City of Calexico				
Notes:				
Tow companies shall provide tow truck operators with uniform attire that consists, at a minimum, of a collared shirt				
Notes:				
The collared shirt shall have a patch either on the upper sleeve or chest that conspicuously identifies the company employing the operator				
Notes:				
Company issued uniform attire shall be kept clean and in good repair				
Notes:				

I have rated the above named company based upon the equipment that was presented to me during the tow services site inspection and my rating represents an accurate accounting of said equipment based upon the requirements as outlined in RFP #_____.

RATER'S NAME

DATE

Large Rig Affidavit

I certify that I am a duly authorized representative of _____ (Tow Company) and in accordance with section _____ of City of Calexico RFP # _____, said company will comply with the requirements of this section by the date enumerated in RFP # _____. I further understand that failure to comply with this section of the RFP could result in elimination from the tow rotation as outlined in section _____ of RFP # _____.

Owner/Agent

Date

"ATTACHMENT D"

CITY OF CALEXICO

COMPANY BACKGROUND

How many years has your company been in business? _____.

How many years has your company been at its current location? _____.

How many permanent full-time employees are there at your company? _____.

What is your current annual volume of business (estimate OK)? _____.

Are there any considerations for buyout or merger with your company? ____ Yes ____ No

Does your company provide towing services exclusively? ____ Yes ____ No

Comments:

Name, Phone and e-mail of Individual to be Assigned City Account:

"ATTACHMENT E"

CITY OF CALEXICO

REFERENCES

Please list three (3) different customers for whom you are currently providing comparable services.

1) Company Name: _____

Address: _____

Contact Person & Phone Number _____

Date(s) Service Provided: _____

Description of Work Provided: _____

2) Company Name: _____

Address: _____

Contact Person & Phone Number _____

Date(s) Service Provided: _____

Description of Work Provided: _____

3) Company Name: _____

Address: _____

Contact Person & Phone Number _____

Date(s) Service Provided: _____

Description of Work Provided: _____
